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7 UNITED STATES DISTRICT COURT  
8 WESTERN DISTRICT OF WASHINGTON  
9 AT SEATTLE

10 WESTERN TOWBOAT COMPANY,

11 Plaintiff,

12 v.

13 VIGOR MARINE, LLC,

14 Defendant.

No. C20-0416-RSM

ORDER DENYING DEFENDANT  
VIGOR MARINE'S MOTION TO  
STAY PROCEEDINGS AND MOTION  
TO EXTEND CASE DEADLINES

15  
16 **I. INTRODUCTION**

17 This matter comes before the Court on Defendant Vigor Marine, LCC ("Vigor")'s  
18 Motion to Stay Proceedings, Dkt. #31, and Motion to Extend Discovery and Pre-Trial  
19 Deadlines, Dkt. #28. Plaintiff Western Towboat Company opposes both motions. Dkts. #34,  
20 #35. For the reasons set forth below, the Court DENIES both of Vigor's motions.

21 **II. BACKGROUND**

22 **A. Factual Background**

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24 This admiralty and maritime action arises out of the sinking of Vigor's Drydock YFD  
25 70 ("Drydock") on or about October 26, 2016 in Monterey Bay. Dkt. #1 at ¶¶ 1-2. Vigor hired  
26 Plaintiff Western Towboat Company ("Western") to provide tugboat services for Vigor's

1 Drydock from Seattle, Washington, to Ensenada, Mexico. *Id.* at ¶¶ 5-8. Parties entered into an  
2 agreement (“the Standard Towage Agreement”) setting forth parties’ obligations and agreed-  
3 upon rates for the Drydock tow.

4         The tow commenced on October 17, 2016 from Seattle. *Id.* at ¶¶ 9-12. On October 25,  
5 2016, when the tow was near the entrance of the San Francisco Bay, the Drydock began to take  
6 on water and list. While parties dispute the facts surrounding the tow’s chartered course after  
7 leaving San Francisco Bay, Western proceeded to tow the Drydock towards Monterey Bay.  
8 That course took the tow into the Monterey Bay National Marine Sanctuary (“the Marine  
9 Sanctuary”) and, on October 26, 2016, the Drydock sank in the Marine Sanctuary. After the  
10 Towboat sank, Vigor was informed by the U.S. National Oceanic and Atmospheric  
11 Administration (“NOAA”) that Vigor may be liable for remediation and related fines for the  
12 Drydock’s sinking in the Marine Sanctuary. At the time of filing this action, NOAA had not  
13 rendered any report or conclusions as to Vigor’s liability for the sinking of the Drydock or its  
14 removal from the Marine Sanctuary. However, Vigor has refused to pay Western for towage  
15 services rendered under the Standard Towage Agreement.

16         In November 2016, NOAA informed Vigor of its determination that the Drydock sank  
17 .92 miles within the Marine Sanctuary. *Id.* at ¶ 13. In July 2017, NOAA identified an  
18 “anomaly” in the Marine Sanctuary near the location where the Drydock sank and asked the  
19 potentially responsible parties to cooperate in funding a research voyage to survey the  
20 wreckage. Although NOAA cancelled the initial research voyage, it offered parties alternatives  
21 to help assess potential damages to natural resources. *Id.* at ¶¶ 16-17. To save costs, Vigor  
22 hired its own research vessel to assess the damage, which confirmed that the Drydock sank in  
23 the Marine Sanctuary where it damaged it submerged lands, surrounding habitat, and possibly  
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1 unique deep-sea flora and fauna. Vigor argues that by June 2019, “parties understood that  
2 NOAA would seek to recoup costs, assess penalties, and assert claims against Western and  
3 Vigor” in connection with the Drydock’s sinking. *Id.* at ¶ 19. On June 21, 2019, parties entered  
4 into an agreement to toll all applicable limitation deadlines “[t]o allow NOAA to finalize its  
5 assessment, to avoid the necessity of immediate proceedings, and to facilitate further  
6 investigation, discussion, and negotiation regarding claims and potential claims” related to the  
7 sinking. Dkt. #32-19 at 2 (“the Tolling Agreement”). However, the Tolling Agreement also  
8 provided that “[n]otwithstanding paragraph 2 above, the Parties may commence proceedings  
9 against each other whenever either Party deems such action appropriate.” *Id.* at 3.

11 On March 16, 2020, Western filed this action against Vigor alleging breach of maritime  
12 contract and seeking a declaratory judgment that Western was not responsible for the sinking  
13 of the Drydock in the Marine Sanctuary. Dkt. #1 at ¶¶ 17-26. Western contends that the  
14 Drydock’s sinking was through no fault of Western, which it claims followed Vigor’s directions  
15 at all times. Vigor denies that it directed or was in a position to direct Western’s towing  
16 operation and claims that Western failed to exercise reasonable care when it towed the sinking  
17 Drydock into the Marine Sanctuary and when it failed to tow the Drydock out before it sank.  
18 Dkt. #15 at ¶¶ 10, 33-35. A bench trial is set in this matter for June 28, 2021. Dkt. #14.

#### 20 **B. Pending Motions regarding Case Deadlines and Trial Date**

21 On March 30, 2021, Vigor moved to extend discovery and pre-trial deadlines based on  
22 recent discovery of relevant, material facts allegedly concealed by Western. Dkt. #28. These  
23 facts relate to the deposition of Richard Courtney of Maritimewx, a weather forecaster whom  
24 Western was contractually obligated to consult with in connection with the Drydock tow. Dkt.  
25 #28 at 2-3. Despite Vigor serving interrogatories and discovery requests on Western seeking  
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1 information on the steps Western took to monitor weather conditions before and after the  
2 voyage, Western's response did not mention Mr. Courtney. Dkt. #28-1 at ¶ 2. Between  
3 February and March 2021, Vigor took depositions of "almost everyone who conceivably have  
4 had contact with the relevant tow," including Mr. Courtney and Russell Shrewsbury, one of  
5 Western's owners. Dkt. #28 at 3 (citing Dkt. #28-1 at ¶¶ 3-4). However, "no one recalled using  
6 [Mr. Courtney's] services in connection with the tow. Finally, with only one Western fact  
7 witness remaining, Western's counsel produced "a single email exchange between Western and  
8 Mr. Courtney confirming they *had* communicated about weather forecasting." *Id.* at 3  
9 (emphasis added). During the final March 26, 2021 Western deposition, Western's Operations  
10 Director described additional emails between Western and Mr. Courtney that Vigor had not  
11 previously seen and had not been disclosed to Vigor. Dkt. #28-1 ¶ 5. The deadline for  
12 disclosure of expert testimony under Fed. R. Civ. P. 26(a)(2) was March 5, 2021, and discovery  
13 closed on April 1, 2021. Dkt. #22 at 1.

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16 On March 26, 2021, parties conferred on the possibility of extending discovery  
17 deadlines, but Western refused to agree to an extension. Accordingly, on March 30, 2021,  
18 Vigor moved to extend deadlines for (1) disclosure of expert testimony, (2) discovery, and (3)  
19 dispositive motions based on Western's failure to disclose facts related to Mr. Courtney's  
20 communications with Western, and to allow Vigor's experts time to prepare factually-informed  
21 reports. Dkt. #28. Western opposes Vigor's motion. Dkt. #34.

22  
23 On April 5, 2021, Vigor filed a separate motion to stay proceedings to allow NOAA  
24 time to issue its environmental damages and penalty assessment that Vigor claims is "central to  
25 resolving the issues raised in the Complaint, Answer, and Counterclaims." Dkt. #31. Western  
26 opposes a stay. Dkt. #35.

### III. DISCUSSION

#### A. Vigor's Motion to Stay Case

As an initial matter, Vigor's motion to stay is six pages over the twelve-page limit required under LCR 7(d)(2). *See* Dkt. #31. Three days after filing its motion to stay, Vigor sought permission to file an overlength brief. Dkt. #33. No opposition shall be filed unless requested by the court. LCR 7(f)(3). The Court finds opposition briefing from Western unnecessary.

Motions seeking approval to file an over-length motion or brief are disfavored but may be filed subject to certain procedural conditions. LCR 7(f). Here, Vigor's cursory explanation that it "unfortunately overlooked the page length requirements" and "perhaps should have also filed this motion" before moving to stay is woefully insufficient. *See* Dkt. #31 at 1. Vigor offers no explanation as to why unique aspects of this case warrant such a substantial increase in page count, nor any other basis for granting its requested relief. In this circumstance, granting Vigor relief solely because of its failure to consult the local rules would encourage parties to seek forgiveness instead of permission—an outcome that would contradict the very purpose of this district's rules prescribing the length of motions and briefs. Accordingly, the Court DENIES Vigor's untimely motion to file an over-length brief, Dkt. #33. In the interest of addressing Vigor's substantive arguments, the Court will limit its consideration to the final twelve pages of Vigor's motion. *See* LCR 7(e)(6) ("The court may refuse to consider any text, including footnotes, which is not included within the page limits.").

Turning to the merits of Vigor's motion, whether to stay a lawsuit is within this Court's discretion. *Lockyer v. Mirant Corp.*, 398 F.3d 1098, 1105 (9th Cir. 2005). In considering a stay request, courts weigh the competing interests that will be affected:

1 the possible damage which may result from the granting of a stay,  
2 the hardship or inequity which a party may suffer in being  
3 required to go forward, and the orderly course of justice  
4 measured in terms of the simplifying or complicating of issues,  
proof, and questions of law which could be expected to result  
from a stay.

5 *CMAX, Inc. v. Hall*, 300 F.2d 265, 268 (9th Cir. 1962). “[I]f there is even a fair possibility that  
6 the stay . . . will work damage to some one else,’ the party seeking the stay ‘must make out a  
7 clear case of hardship or inequity.’” *Lockyer*, 398 F.3d at 1105 (quoting *Landis v. N. Am. Co.*,  
8 299 U.S. 248, 255 (1936)). “The proponent of a stay bears the burden of establishing its need.”  
9 *Clinton v. Jones*, 520 U.S. 681, 708 (1997).

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11 Here, Vigor seeks a stay pending NOAA’s completion of its penalty assessment for  
12 damage to the sanctuary caused by the Drydock. Dkt. #31. Vigor contends that a stay is  
13 justified because (i) proceeding to trial without the assessment would result in hardship and  
14 inequity; (ii) a stay would not cause any damage; and (iii) it would be simpler to try the case at  
15 once than to proceed to a partial trial without the assessment. The Court will address each  
16 argument in turn.

17  
18 i. *Hardship or Inequity*

19 Vigor has not sufficiently demonstrated that hardship or inequity would result absent a  
20 stay. As an initial matter, Vigor litigated this case for more than a year without indicating to  
21 the Court that resolution of parties’ claims depends on NOAA completing its assessment.  
22 Although Vigor maintains that parties repeatedly discussed the issue, Dkt. #38 at ¶ 6, neither  
23 the joint status report nor parties’ stipulations to modify the scheduling order identify NOAA’s  
24 assessment as a key factor in this case’s resolution and potential basis for delay. The fact that  
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1 Vigor failed to raise this issue until less than three months before trial undercuts the urgency of  
2 its request.

3 Moreover, it is unclear to the Court what information contained in the NOAA penalty  
4 assessment is necessary for resolving parties' claims in this litigation. As Vigor concedes, the  
5 NOAA report will not address parties' respective liability for the Drydock's sinking. *See* Dkt.  
6 #15 at ¶ 16 ("NOAA has not (and will not) render any report or conclusion concerning liability  
7 for the sinking of the Drydock."). While Vigor has failed to precisely identify the subject matter  
8 covered by NOAA's penalty assessment, the Court gleans from parties' briefing that NOAA's  
9 analysis will address the limited issue of damages to the Marine Sanctuary. On this basis, the  
10 penalty assessment does not appear dispositive of or necessary to resolution of parties' contract  
11 dispute and related claims. *Cf. Westridge Townhomes Owners Ass'n v. Great Am. Assurance*  
12 *Co.*, No. C16-1011 RSM, 2016 WL 11066578, at \*1 (W.D. Wash. Oct. 7, 2016) (Granting 90  
13 day stay to allow Defendants to complete insurance claim investigation and issue coverage  
14 decision).

15 Vigor's arguments to the contrary are unavailing. Vigor claims that it intends to defend  
16 Western's breach of contract claim by arguing that Western breached the Standard Tow  
17 Agreement when it exposed Vigor to a significant NOAA penalty. Dkt. #31 at 17. However,  
18 the precise amount of that penalty is not necessary to resolving whether Western negligently  
19 exposed Vigor to a penalty in the first instance. Vigor also argues that it seeks to hold Western  
20 responsible for costs Vigor incurred from assisting NOAA with investigation of damage to the  
21 Marine Sanctuary, while Western seeks a declaratory judgment that all liability for the sinking  
22 of the Drydock lies solely with Vigor. *Id.* at 16. While NOAA's completion of the penalty  
23 assessment may affect the final damages amount incurred by the liable party, Vigor has not  
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1 sufficiently explained how that amount will assist the Court in resolving the relevant issue here:  
2 the liability between Vigor and Western. On this basis, the Court finds that no hardship or  
3 inequity would result from proceeding to trial in this matter before NOAA has finalized the  
4 total penalty amount regarding damage to the Marine Sanctuary.

5           ii.       *Damage to Western*  
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7       Next, the Court finds that a stay in this case pending NOAA's completion of its penalty  
8 assessment would cause damage to Western. Western argues that staying this action would  
9 require its insurers to continue carrying large reserves so long as the "potential liability to the  
10 United States hangs over Western's head," and would prevent Western from moving for  
11 summary judgment. Dkt. #35 at 6, n.5. The Court agrees with Vigor that Western has failed  
12 to explain how insurers' harm from carrying large reserves will cause harm to Western.  
13 However, the Court acknowledges that delaying resolution of parties' claims, which would  
14 determine liability between Vigor and Western, subjects Western to protracted uncertainty  
15 regarding its responsibility for a potentially large NOAA penalty—an uncertainty that it seeks  
16 to resolve through a declaratory judgment. *See* Dkt. #1 at ¶¶ 22-26. Western's claim for  
17 declaratory relief distinguishes this case from those where plaintiffs merely sought recovery of  
18 monetary damages, and a stay would merely delay such recovery. *See Lockyer*, 398 F.3d at  
19 1110 (Noting that party granted stay in *CMAX, Inc. v. Hall* "sought only damages. It alleged  
20 no continuing harm and sought no injunctive or declaratory relief. Delay of CMAX's suit  
21 would result, at worst, in a delay in its monetary recovery, with possible (though by no means  
22 certain) loss of prejudgment interest.") (citing 300 F.2d 265, 269 (9th Cir. 1962)).

23       Furthermore, any damage inflicted on Western through further delay is amplified by the  
24 fact that Vigor's requested stay would be indefinite. Vigor concedes that NOAA's assessment  
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1 “will likely not be ready this year” yet provides no clear timeline on when the assessment may  
2 be available. *See* Dkt. #32 at 2. Vigor states that in a phone conversation with NOAA employee  
3 Ericka Hailestocke-Johnson, NOAA estimated that the “final phase of NOAA’s process” is  
4 expected “to take months, not years.” Dkt. #38 at ¶ 2. Notwithstanding Vigor’s contention that  
5 NOAA’s penalty assessment is forthcoming, the Court finds that the lack of any concrete  
6 timeline by which NOAA will finish its assessment makes Vigor’s requested stay, by definition,  
7 indefinite. In such circumstances, courts are reluctant to grant stays absent strong justification.  
8 *See Yong v. I.N.S.*, 208 F.3d 1116, 1119 (9th Cir. 2000) (“If a stay is especially long or its term  
9 is indefinite, we require a greater showing to justify it.”); *see also Dependable Highway Exp.,*  
10 *Inc. v. Navigators Ins. Co.*, 498 F.3d 1059, 1066 (9th Cir. 2007) (“Generally, stays should not  
11 be indefinite in nature.”). Consequently, without any clear timeline by which NOAA expects  
12 to complete its penalty assessment, the indefinite nature of the stay exacerbates damage to  
13 Western.  
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16 iii. *Simplification of Case*

17 Finally, Vigor has not sufficiently demonstrated that a stay pending NOAA’s  
18 completion of its assessment would simplify the issues in this case. Indeed, as the Court  
19 explained *supra*, § III(a)(i), Vigor has not clearly identified the information it expects the  
20 NOAA penalty assessment to contain and, moreover, how that information will assist the Court  
21 in resolving liability between Vigor and Western. To the extent NOAA’s penalty assessment  
22 impacts damages owed by the liable party, Vigor has not justified staying the entirety of this  
23 proceeding until NOAA’s penalty amount is finalized. For the same reason, Vigor’s argument  
24 that the NOAA assessment will impact attorney’s fees is unavailing.  
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1 The Court also considers that staying the case in its current procedural posture, where  
2 two dispositive motions are pending, may needlessly delay resolution of this matter. *Cf. Knapp*  
3 *v. Reid*, No. C15-1769RSM, 2016 WL 561734, at \*2 (W.D. Wash. Feb. 12, 2016) (Granting  
4 stay where “case is in its infancy. Indeed, no Answer has yet been filed, no trial date is set, and  
5 discovery has not yet begun.”). Here, in contrast, it is possible that key issues may be resolved  
6 on the merits. For all these reasons, the Court is not persuaded that a stay at this stage of the  
7 litigation would simplify the issues or support judicial efficiency.

9 On Reply, Vigor appears to amend its request for a stay: “Vigor does not oppose waiting  
10 to stay the case until after discovery is complete and dispositive motions are resolved.” Dkt.  
11 #37 at 2. Given that parties briefed Vigor’s original stay request, i.e. an immediate stay upon  
12 completion of discovery, the Court declines to consider Vigor’s alternative request at this time.  
13 However, it notes that the instant decision does not preclude Vigor from renewing its stay  
14 request upon resolution of parties’ dispositive motions.

16 Based on these factors, Vigor has not met its burden of establishing the need for a stay  
17 at this stage in the case. Having determined that a stay is not warranted, the Court now turns to  
18 Vigor’s motion to extend case deadlines, Dkt. #28.

#### 19 **B. Vigor’s Motion to Extend Case Deadlines**

21 Vigor moves for a time extension pursuant to Fed. R. Civ. P. 6(b), which sets forth the  
22 standard for extending time. Dkt. #28. at 1. However, given that Vigor’s motion requests  
23 modification of the Court’s pre-trial deadlines set forth in its scheduling order, *see* Dkt. #22,  
24 Vigor’s motion is properly analyzed under Fed. R. Civ. P. 16(b).

25 A scheduling order “may be modified only for good cause and with the judge’s  
26 consent.” Fed. R. Civ. P. 16(b)(4). “Good cause” means that scheduling deadlines cannot be

1 met despite the party's diligence. *Johnson v. Mammoth Recreations, Inc.*, 975 F.2d 604, 609  
2 (9th Cir. 1992). "The pretrial schedule may be modified if it cannot reasonably be met despite  
3 the diligence of the party seeking the extension. If the party seeking the modification was not  
4 diligent, the inquiry should end and the motion to modify should not be granted." *Zivkovic v.*  
5 *Southern California Edison Co.*, 302 F.3d 1080, 1087 (9th Cir. 2002) (internal citations and  
6 quotations omitted). "[C]arelessness is not compatible with a finding of diligence and offers  
7 no reason for a grant of relief." *Johnson*, 975 F.2d at 609. Where a motion is made to extend  
8 deadlines after the deadlines have expired, the party seeking the extension must show excusable  
9 neglect. *See* Fed. R. Civ. P. 6(b)(1)(B).

11 At the time Vigor filed its Motion on March 30, 2021, the deadline for disclosure of  
12 expert testimony had expired more than three weeks earlier. *See* Dkt. #22 at 1 (Extending  
13 deadline for expert witness disclosures and reports to March 5, 2021). Likewise, discovery  
14 closed by the time briefing was complete on April 16, 2021. *See id.* (Discovery completed by  
15 April 1, 2021). Where a party's Rule 16 motion seeks to reopen discovery, courts consider the  
16 following factors to determine whether relief is appropriate: (1) whether trial is imminent, (2)  
17 whether the request is opposed, (3) whether the non-moving party would be prejudiced, (4)  
18 whether the moving party was diligent in obtaining discovery within the guidelines established  
19 by the court, (5) the foreseeability of the need for additional discovery in light of the time  
20 allowed for discovery by the district court, and (6) the likelihood that the discovery will lead to  
21 relevant evidence. *City of Pomona v. SQM N. Am. Corp.*, 866 F.3d 1060, 1066 (9th Cir. 2017)  
22 (quoting *United States ex rel. Schumer v. Hughes Aircraft Co.*, 63 F.3d 1512, 1526 (9th Cir.  
23 1995), *vacated on other grounds*, 520 U.S. 939 (1997)). "It is 'significant' when a party is  
24 seeking to re-open discovery rather than extend the discovery deadline." *Leonard v. Denny*,

1 No. 12-cv-0915, 2018 WL 2949852, \*2 (E.D. Cal. June 13, 2018). “‘The difference [between  
2 the two types of requests] is considerable’ because ‘a request for an extension acknowledges  
3 the importance of a deadline, [while] a retroactive request suggests that the party paid no  
4 attention at all to the deadline.’” *Id.* (alterations in original) (quoting *W. Coast Theater Corp.*  
5 *v. City of Portland*, 897 F.2d 1519, 1524 (9th Cir. 1990)).  
6

7 The Court has twice granted parties’ stipulated requests to extend the deadlines for  
8 disclosure of expert testimony under Rule 26(a)(2) and for completion of discovery. *See* Dkt.  
9 #10 (extending deadline for disclosure of expert testimony from December 30, 2020 to February  
10 5, 2021); Dkt. #22 (extending deadline for disclosure of expert testimony from February 5, 2021  
11 to March 5, 2021 and deadline for completion of discovery from March 1, 2021 to April 1,  
12 2021). Nevertheless, Vigor maintains that because of Western’s failure to produce documents  
13 that have “significantly altered the fact discovery landscape,” it is necessary to reopen  
14 depositions to develop facts necessary for Vigor’s experts to prepare their final reports. Dkt.  
15 #28 at 1-2.  
16

17 Three factors clearly weigh against reopening discovery at this stage. First, trial is set  
18 for June 28, 2021 and therefore imminent. Second, Western opposes Vigor’s request for the  
19 time extension. Third, the need for additional discovery was not foreseeable in this matter, and  
20 parties were afforded ample time to complete discovery. The Court did not set an abbreviated  
21 timeline at the outset and twice granted parties’ requests to extend discovery-related deadlines.  
22 Accordingly, whether relief is appropriate hinges on the remaining three factors: (i) whether  
23 Western would be prejudiced by a time extension; (ii) whether Vigor was diligent in obtaining  
24 discovery within the guidelines established by the court; and (iii) the likelihood that reopening  
25 depositions will lead to relevant evidence. *City of Pomona*, 866 F.3d at 1066.  
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1           i.       *Prejudice to Western*

2           Western argues that reopening discovery at this late date would prejudice Western as it  
3 would conceivably disrupt case deadlines, including the June 2021 trial date, and further extend  
4 the time since the Drydock sinking occurred in October 25, 2016. Dkt. #34 at 7, 10. The Court  
5 agrees. The Court has twice extended case deadlines in this matter, giving parties a considerable  
6 length of time to prepare expert reports and conduct discovery. In addition, consistent with this  
7 Court's April 29, 2021 deadline for dispositive motions, parties' cross-motions for summary  
8 judgment are now pending before the Court. *See* Dkts. ##39, 42. At this late stage, reopening  
9 discovery will further delay this matter that has been pending for over a year. To the extent  
10 Vigor argues that Western is waiting on supplemental productions from Vigor and has asked  
11 for additional depositions of Vigor personnel, *see* Dkt. #36 at 2, Western's potential reasons for  
12 seeking relief from the deadline are inapposite. Western had the opportunity to stipulate to  
13 Vigor's time extension motion and declined to do so. For that reason, any countervailing  
14 interest Western may have in extending deadlines in this case does not mitigate the prejudice  
15 inflicted from further delay.  
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17           ii.       *Vigor's Diligence in Obtaining Discovery*

18           The Court likewise finds that the diligence prong weighs against granting Vigor's  
19 request to modify the scheduling order and reopen discovery. Notwithstanding Western's  
20 untimely disclosures, Vigor has shown neither excusable neglect nor good cause for extending  
21 factual discovery at this stage of the case. Vigor concedes that it failed to submit written reports  
22 for its weather expert, Ken Campbell, and its tug expert, Russ Johnson, by the March 5, 2021  
23 deadline for expert testimony under Rule 26(a)(2). Vigor's March 5, 2021 expert disclosure  
24 statement acknowledges this deficiency by stating "[a]s discovery is not yet complete and Vigor  
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1 has yet to conduct key depositions in this case, these experts have not yet prepared written  
2 reports. Such reports will be disclosed as they become available.” Dkt. #24 at 1. To the extent  
3 Vigor criticizes Western’s reports timely submitted on March 5, 2021 as “based on incomplete  
4 and inaccurate facts and opinions,” Dkt. #36 at 3, these challenges do not excuse Vigor’s own  
5 failure to comply with the expert disclosure deadline.

6  
7 Vigor argues that its reports belatedly disclosed on March 12, 2021 and March 30, 2021,  
8 respectively, were “initial reports and subject to revision” and that the complete reports “await  
9 Western’s true cooperation in, and the completion of, the discovery process.” Dkt. #36 at 4.  
10 Notwithstanding Vigor’s contention that discovery was ongoing at the time expert disclosures  
11 were due, the requirements of Rule 26(a)(2) are clear: “Unless otherwise stipulated or ordered  
12 by the court, this disclosure *must be accompanied by a written report*—prepared and signed by  
13 the witness—if the witness is one retained or specially employed to provide expert testimony .  
14 . . .” Fed. R. Civ. P. 26(a)(2)(B) (emphasis added). Consequently, while Vigor attempts to shift  
15 responsibility to Western based on information it uncovered in a March 26, 2021 deposition,  
16 Vigor had already missed the Rule 26(a)(2) deadline weeks earlier without seeking leave of this  
17 Court or moving for relief from the deadline. Accordingly, the Court is not persuaded that  
18 Vigor “diligently pursued sufficient discovery” throughout this litigation and, but for Western’s  
19 unilateral actions related to the Courtney communications, it would have complied with the  
20 case deadlines.

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23 iii. *Likelihood of Relevant Evidence*

24 Finally, allowing Vigor to conduct more depositions may likely lead to relevant  
25 evidence. Vigor contends that it would pursue new lines of inquiry based on newly-discovered  
26 evidence that Western consulted with Mr. Courtney before the voyage and with NOAA about

1 liability after the incident. Dkt. #36 at 3. However, the Court finds that the likelihood of  
2 discovering new evidence does not outweigh the remaining factors that weigh strongly against  
3 reopening discovery. *See Haines v. Get Air LLC*, No. CV1500002TUCRMEJM, 2018 WL  
4 5020479, at \*4 (D. Ariz. July 30, 2018) (“[A]llowing GALLC to use its expert reports and  
5 depose Plaintiff may well lead to evidence relevant to its defenses. However, that this one  
6 factor weighs in GALLC’s favor does not outweigh all of the other factors supporting the  
7 undersigned’s conclusion that the motion should be denied.”).

9 For these reasons, Vigor has not shown good cause or excusable neglect to re-open the  
10 discovery process and once again modify this Court’s scheduling order.

#### 11 IV. CONCLUSION

12 Having reviewed Defendant Vigor’s motions, Plaintiff Western’s responses, and the  
13 remainder of the record, the Court ORDERS:

- 14 (1) Defendant Vigor’s Motion to File Over-Length Brief, Dkt. #33, is DENIED.  
15 (2) Defendant Vigor’s Motion to Stay Case, Dkt. #31, is DENIED;  
16 (3) Defendant Vigor’s Motion to Extend Discovery and Pre-Trial Deadlines, Dkt. #28, is  
17 DENIED.  
18

19 IT IS SO ORDERED.

20 Dated this 13<sup>th</sup> day of May, 2021.

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25 RICARDO S. MARTINEZ  
26 CHIEF UNITED STATES DISTRICT JUDGE